



CITY OF NEWTON, MASSACHUSETTS

Department of Planning and Development

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PUBLIC HEARING MEMORANDUM

Public Hearing Date:	Sept. 27, 2010
Zoning and Planning Action Date:	Dec. 13, 2010
Board of Aldermen Action Date:	Dec. 20, 2010
90-Day Expiration Date:	Dec. 26, 2010

DATE: Sept 24, 2010

TO: Alderman Marcia T. Johnson, Chairman, and
Members of the Zoning and Planning Committee

FROM: Candace Havens, Interim Director of Planning and Development
Juris Alksnitis, Interim Chief Planner for Long-Range Planning
Seth Zeren, Chief Zoning Code Official

RE: #216-10 KSKIM UBS EQUITY PARTNERS LLC, owners of property at 19- 31
Needham Street, proposing that chapter 30 section §30-13(a) Allowed Uses in Mixed
Use 1 Districts, be amended by adding a new subsection (5) as follows: "(5) Service
establishment;" and that existing subsection (5) be re-numbered (6) and that section
§30-13(b) Special Permits in Mixed Use 1 Districts be amended by deleting
subsection "(4) service establishment;" and re-numbering subsequent subsections (4)
through (15).

CC: Board of Aldermen
Planning and Development Board
John Lojek, Commissioner of Inspectional Services
Marie Lawlor, Assistant City Solicitor

The purpose of this memorandum is to provide the Board of Aldermen, Planning and Development Board, and the public with technical information and planning analysis which may be useful in the decision making process of the Board. The Planning Department's intention is to provide a balanced view of the issues with the information it has at the time of the public hearing. There may be other information presented at or after the public hearing that the Zoning and Planning Committee of the Board of Aldermen will consider in its discussion at a subsequent Working Session.

BACKGROUND

Adopted in 1987, the Mixed Use 1 and 2 zones were applied to various properties along Needham Street and its side streets, an area previously largely zoned Manufacturing. Originally intended to open up development opportunities for office space and biotech research, few uses have been allowed by right. Most existing uses in the MU1 and MU2 zones are either pre-existing

nonconforming or allowed by special permit. Since 1987, no other properties have been rezoned to this classification elsewhere in the city.

Currently, service establishments are allowed only by special permit in the MU1 zone, while they are allowed by right in the neighboring MU2 zone. Other distinctions between the uses allowed in the zones are enumerated in the following table:

	MU1	MU2
Service establishments	Special Permit	By Right
Second floor residential	Not Allowed	By Right
FAR	1.5 (2.0 by S.P.)	1.0 (2.0 by S.P.)
Floors	3 (4 by S.P.)	2 (4 by S.P.)

The petitioners have empty commercial space at 19-31 Needham Street located in the MU1 zone that they would like to lease to a service establishment. The petitioners pointed out that of the uses along Needham Street, a very small percentage are allowed by right, the majority being allowed by special permit or as pre-existing nonconformities. Allowing service establishments by right would expand the range of businesses that could easily move into commercial space along Needham Street. The petitioners also asserted that, as most service establishments are small businesses, the time and cost of the special permit process represented a prohibitive hardship for economic development.

The item received preliminary discussion at the Zoning and Planning Committee on September 13, 2010, where various questions were raised by Committee members as reflected in the minutes from the meeting. Special concern arose around what qualified as a "service establishment" and the committee members suggested that a clear definition of service establishment was needed. Such a definition would require a new docket item and a separate public hearing.

EXISTING ORDINANCE

Section 30-13(b)(4), *Special Permits in Mixed Use 1 Districts*, allows service establishments in the MU1 zone by special permit.

Section 30-13(c)(9), *Allowed Uses in Mixed Use 2 Districts*, allows service establishments by right in the MU2 zone.

PROPOSED AMENDMENT

Petition #216-10 proposes that Section 30-13(a), *Allowed Uses in Mixed Use 1 Districts*, and Section 30-13(b), *Special Permits in Mixed Use 1 Districts*, be amended by:

1. Adding a new subsection 30-13(a)(5) as follows: "(5) Service establishment;" and
2. Renumbering existing subsection 30-13(5) to "(6)," and
3. Deleting section 30-13(b)(4) "(4) service establishment;" and
4. Renumbering subsequent subsections of 30-13(b) (4) through (15).

DISCUSSION

Needham Street is a major area of interest to the City and to developers, as it represents over 100 acres of land with significant development potential and transportation capacity constraints. The City is keenly aware of the importance and challenges that good development along Needham Street presents and seeks a comprehensive approach to revising the relevant regulations and procedures.

The proposed amendment would alter the text governing service establishments in the MU1 zone. The subject amendment would allow service uses by right in an additional 90 acres containing an eclectic mix of uses including, but not limited to, small and large format retail stores, offices, warehouses, manufacturing, parking lots, and a large housing development.

Preliminary discussion at the Zoning and Planning Committee working meeting on September 13, 2010 raised the issue that Section 30-1, *Definitions* does not contain a definition for "service establishment," and confusion may arise as to uses which may be included in this category. Service establishments are allowed in the ordinance generally by right in the BU1-4 zones, but not in the Manufacturing or Light Manufacturing zones.

Newton has historically interpreted "service establishment" to mean any business that primarily provides personal services to customers, including hair and nail salons, personal tutoring, dry cleaners and tailors, personal trainers, repair services (computers, watches, etc.). Such businesses are primarily about providing a service to customers, though they may also include the sale of related products so long as they are clearly secondary, ancillary, and related to the primary use (e.g. shampoo at a hair salon). The American Planning Association's Land-Based Classification Project (<http://www.planning.org/lbcs/>) defines service-oriented shopping as:

"Those shops that primarily sell services on site. The distinction is in the physical attributes of activities associated with services, such as hairdressing. Business services, such as accounting, legal services, advertising, etc. belong in the office category."

Section 30-11(a), *Allowed Uses*, in the Business Districts 1, 2, 3, and 4 contains this partial definition of a service establishment:

"Barbershop, beauty parlor, tailor, shoe repair shop or similar service establishment.."

An important consideration with regard to uses in the mixed-use zone relates to the distinction between the uses allowed in the MU1 and the "Mixed Use" in its name. The uses allowed in the MU1 zone by right – (1) office, (2) research and development facility (no recombinant DNA research), (3) manufacturing (non-noxious), (4) assembly or fabrication of materials, or (5) other similar uses – are more akin to those of a light industrial district than a mixed use district. Special permit uses in the MU1 include retail stores, restaurants, fuel establishments, storage, bank, multi-family dwelling, etc. This reflects an approach whereby it appears that emphasis was initially placed on encouraging industrial and office-oriented uses, while exercising more control via special permit when mixing in other types of commercial uses. Whether or not this approach should be maintained in the future will depend on a more comprehensive review and discussion regarding the preferred future character of the Needham Street area, and types of zoning mechanisms best suited to achieving this future.

SUMMARY

While the proposed use may be compatible with other uses in the area, the details of such an establishment merit consideration in the greater context of the area, making it a good candidate for special permit review. It is recognized that seeking a special permit comes with various financial and procedural burdens more difficult to bear for small businesses. Nevertheless, current practices for the review of relatively simple special permit requests have allowed for a public hearing and working session to occur on the same night, thus reducing the processing time. Staff suggests the property

owner meet with the Development Review Team to discuss the details of the project to assess its complexity.

The petitioners have raised an important issue for consideration in the long-range planning and zoning of Newton's mixed-use areas, a conversation that will likely be taken up by the Zoning Reform Task Force now in its formative stages and should be considered as part of a larger zoning overhaul of the mixed-use zones, including a discussion of the City's economic development goals, transportation limitations, and preferred future for the Needham Street area.

One avenue to consider might be to explore expanding the mixed-use character of Needham Street, by investigating a zoning map revision expanding the MU2 into parts of the MU1. Perhaps a reasonable case could be made that the MU2 zone would be more appropriate for certain properties in the MU1 and that crossing Needham Street need be no great barrier. A determination of this appropriateness, however, is hampered by a lack of a defined intent for each zone. Redrawing the map would affect a small number of properties whereas a text amendment would affect a much larger area, allowing an incremental conversion of Needham Street to new uses. However, this approach may create other new problems, particularly if existing structures would be rendered nonconforming under the MU2's more stringent FAR and height standards.

A further point is raised by this case: many of our uses are either poorly or not at all defined. Clear definitions of what is meant by each use would improve our existing zoning and development process, while also being a useful step toward any comprehensive rezoning process.

Lastly, it is suggested that the Board of Aldermen and Planning staff work together to consider creating a regular scheduled zoning update process where changes to the zoning ordinances are considered as a group and voted on at the same time to reduce the pressure for single amendments to the Zoning Ordinance. Such a process would recognize that the Ordinance will always need continual revision in the face of changing land use drivers and community goals, but that all such changes should be part of a regular process rather than triggered by single changes driven by particular projects or limited business interests.